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EXAMINER

SWEARINGEN, JEFFREY R

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DANIEL E. FORD and STEVEN V. BRITT

Appeal 2007-3570
Application 10/082,245
Technology Center 2100

Decided: March 19, 2008

Before HOWARD B. BLANKENSHIP, ST. JOHN COURTENAY III, and
CAROLYN D. THOMAS, *Administrative Patent Judges*.

BLANKENSHIP, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1, 4-10, 24-26, and 33-35. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Appellants' invention relates to information logging, both local and remote, and to selective reflection of information to a remote support or maintenance provider. (Spec. 1: ¶ 1.) Claim 1 is illustrative.

1. A machine-implemented method of logging information, machine-implemented steps of the method comprising:

receiving a notice of locally-originated loggable information;

selectively making an entry in a local log regarding said information according to a first criterion; and

selectively making an entry in a remote log regarding said information according to a second criterion different than the first criterion.

The Examiner relies on the following references as evidence of unpatentability.

Brown	US 5,857,190	Jan. 5, 1999
Nemitz	US 6,381,712 B1	Apr. 30, 2002
		(filed Jun. 30, 1999)

Claims 1, 4-10, 24, 25, and 33-35 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Brown.

Claim 26 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Brown and Nemitz.

Claims 2, 3, 11-23, and 27-32 have been canceled.

The rejections

Brown describes an event logging system and method for an interactive entertainment network system having a headend, or content provider, connected via a distribution network to multiple user interface units. An event evaluator at the user interface unit determines whether an event is a loggable event. Loggable events are reported to an event log manager at the headend over the distribution network. The event log manager at the headend selects an appropriate database to store the event information, based upon the kind of event being logged. Brown Abstract.

The Examiner finds that Brown teaches the subject matter of claim 1 except for “explicit” disclosure that logging can be performed locally. The Examiner refers to several passages in the reference in support of the view that it would have been obvious to one skilled in the art to include local logging capability, to allow for backup storage of events and to allow storage of events in the case of a lost connection with a remote logging service. (Ans. 3.)

In *KSR Int’l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1739 (2007), the Supreme Court emphasized “the need for caution in granting a patent based on the combination of elements found in the prior art,” and discussed circumstances in which a patent might be determined to be obvious without an explicit application of the teaching, suggestion, motivation test.

In particular, the Supreme Court emphasized that “the principles laid down in *Graham* reaffirmed the ‘functional approach’ of *Hotchkiss*, 11 How. 248.” *KSR*, 127 S.Ct. at 1739 (citing *Graham v. John Deere Co.*, 383 U.S. 1, 12 (1966) (emphasis added)), and reaffirmed principles based on its

precedent that “[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *Id.* The Court explained:

When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, §103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill.

Id. at 1740. The operative question in this “functional approach” is thus “whether the improvement is more than the predictable use of prior art elements according to their established functions.” *Id.*

We have considered all of Appellants’ arguments in the briefs, but we are not persuaded of error in the rejection of claim 1. Logging information locally in the Brown system, in persistent memory, for the reasons identified by the Examiner represents no more than the predictable use of prior art elements according to their established functions, yielding predictable results.

Moreover, the claim under our review, as broadly drafted, fails to set forth a limitation commensurate with the feature Appellants believe renders the claimed subject matter nonobvious.

In particular, claim 1 does not require that the entry in a “local log” according to a first criterion is an entry of loggable information into any particular type of memory. Brown describes the user interface 26 (Fig. 1) determining (according to a first criterion) whether an event is a loggable event. Brown col. 5, ll. 17-28. Brown further teaches that the loggable event may be first stored in event buffer 34 *at the user interface*. Col. 7, ll. 54-67.¹ The reporting of buffered events to the event log manager 56 at the headend (*id.*) is, as the Examiner finds, within the meaning of “selectively making an entry in a remote log regarding said information according to a second criterion different than the first criterion.” We add that claim 1 also does not distinguish over another “second criterion” described by Brown (col. 8, ll. 1-64), by which the event log manager 56 determines the proper place to store the information that is “remote” with respect to the local user interface unit.

We sustain the rejection of claim 1. Because Appellants have grouped all claims but 26 together, and Appellants rely on the arguments with respect to base claim 1 in response to the rejection of claim 26, all the other claims fall with claim 1. *See* 37 C.F.R. § 41.37(c)(1)(vii).

¹ Appellants’ Appeal Brief (at 6) states that it “should be understood” that “buffering an event is not the same as logging an event.” Appellants have not, however, provided any evidence in support of that view. Moreover, Appellants’ disclosure (e.g., Spec. 4: ¶ 19) indicates that “logging” is not limited to any particular definition that would distinguish over placing event information in a buffer (non-persistent memory).

CONCLUSION

The rejection of claims 1, 4-10, 24-26, and 33-35 under 35 U.S.C. § 103(a) is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

Appeal 2007-3570
Application 10/082,245

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